case, and was at once sentenced. The state constitution provided that "no person shall, for any indictable offense, be proceeded against criminally by information," with certain exceptions. *Held*, that the relator was properly sentenced. *Commonwealth ex rel. Stanton* v. *Francies*, 95 Atl. 527 (Pa.).

For a discussion of this case, see NOTES, p. 326.

INDICTMENT AND INFORMATION — JOINDER OF DEFENDANTS — JOINT INDICTMENT FOR PRACTISING MEDICINE WITHOUT A LICENSE. — Two defendants were indicted jointly for "assuming the duties of a physician, and . . . treating persons afflicted with disease . . . without first having obtained from the state" the certificate required by Section 2580, Code of Iowa. *Held*, that the indictment was good. *State* v. *McAninch*, 154 N. W. 399 (Ia.).

The traditional view has been that there can be no joint indictment for a crime which from its nature cannot be jointly committed. WHARTON, CRIMINAL PLEADING AND PRACTICE, 8 ed., § 302. Thus it was held there could be no joint indictment for exercising a trade without apprenticeship. *Rex* v. *Wesion*, 1 Strange 623. Nor for perjury. 2 Strange 920. Early American cases accepted this notion without analysis. *Vaughn* v. *State*, 4 Mo. 530; *United States* v. *Kazinski*, 26 Fed. Cas. 682. And it persists in some jurisdictions. *Walker* v. *Commonwealth*, 172 S. W. (Ky.) 109; *State* v. *Wilson*, 115 Tenn. 725, 91 S. W. 195. It has even been held that two persons cannot be jointly drunk. *State* v. *Deaton*, 92 N. C. 788. The rule seems to have been purely formal, however, for the mere insertion of the word "separaliter" rendered a joint indictment for a crime of this nature valid. 1 STARKIE, CRIMINAL PLEADING, 43. This being so, it is a short step to hold that the word "several" can be implied where from the nature of the act the crime is several. See *State* v. *Mills*, 39 N. J. L. 587, 588. It is now recognized that the test should be practical, rather than analytical, turning on substantial fairness to the parties rather than the nature of the crime. *State* v. *Winstandley*, 151 Ind. 316, 51 N. E. 92. *Cf. Rex* v. *Philips*, 2 Strange 920. In the principal case a joint indictment can work no hardship, as the court may nevertheless order separate trials, if justice or convenience requires. MCLAIN'S ANN. CODE OF IOWA, § 5375.

INSURANCE — CONSTRUCTION OF PARTICULAR WORDS AND PHRASES IN STANDARD FORMS — STANDARD MORTGAGE CLAUSE AS PROTECTION AGAINST OWNER'S ACTS. — A mortgagee of certain property sued on the owner's policy. The policy contained standard clauses making the loss, if any, payable to the mortgagee as his interest might appear and stipulating that the conditions contained therein should apply to the mortgagees in the manner written on, attached, or appended thereto. No conditions were appended to the mortgagee clause. The insurance company set up the defense that the owner had burned the property. *Held*, that in the absence of appended conditions the mortgagee's right was unaffected by the owner's acts. *Stamey* v. *Royal Exchange Assur. Co.*, 150 Pac. 227 (Kan.).

Courts generally regard the above mentioned clauses as constituting, between the insurer and the mortgagee, a separate contract whereby the former agrees to pay the latter irrespective of invalidating acts by the owner. *Queen Ins. Co.* v. *Dearborn Savings etc. Ass'n*, 175 Ill. 115, 51 N. E. 717; *Oakland Home Fire Ins. Co.* v. *Bank of Commerce etc.*, 47 Neb. 717, 66 N. W. 646; *Christensen* v. *Fidelity Ins. Co.*, 117 Ia. 77, 90 N. W. 495. Reasons for this bi-contractual theory are not forthcoming, except that it is a method of reaching a desired result. See *Hartford Fire Ins. Co.* v. *Olcott*, 97 Ill. 439. Though it is arguable, it does not seem desirable to stretch the mere agreement by the owner to insure for the mortgagee's benefit into a delegation of power to the former to enter a contract in the latter's behalf. This speculation aside, the

requisites of a contract relation are lacking. The mortgagee is not a party to the agreement, and gave no consideration, either executed or promissory. In truth there are not two contracts, and thus the mortgagee must be regarded as a beneficiary with an independent vested right, if, as the court contends, he may recover irrespective of the owner's act. See 23 HARV. L. REV. 311; 27 *ibid.* 763. It is wrong, however, to place this construction on the absence of conditions appended to the mortgagee clause, which is better construed to give the mortgagee only a vicarious right. *Delaware Ins. Co.* v. *Greer*, 120 Fed. 916.

LANDLORD AND TENANT — RENT — DISTRESS: MAY TENANT'S RECEIVER ENJOIN DISTRESS FOR ADVANCE RENT? — The defendant leased premises to a company which agreed to pay rent yearly in advance. At the beginning of the second year it failed to pay as agreed and the defendant distrained for the rent. Later the company went into the hands of a liquidator, who seeks to enjoin the defendant from proceeding further with the distress. *Held*, that the injunction will not issue. *Venner's Electrical Cooking & Heating Appliances* v. *Thorpe*, 60 Sol. J. 27 (C. A.).

It is well settled that a receiver takes property subject to all claims against it, legal or equitable, in the hands of the person or corporation from whom he takes. *Chicago Title and Trust Co.* v. *Smith*, 158 Ill. 417, 41 N. E. 1076; *Commercial Pub. Co.* v. *Beckwith*, 167 N. Y. 329, 60 N. E. 642. Again it has been explicitly held that a distress previously levied for rent in arrears is valid against the receiver. *In re Roundwood Colliery Co.*, [1897] 1 Ch. 373. The fact, moreover, that a distress is levied immediately for rent due in advance, when the agreed time of payment is past, in no way impairs its validity. *Atkins* v. *Byrnes*, 71 Ill. 326; *London, etc. Discount Co.* v. *London, etc. Ry. Co.*, [1893] 2 Q. B. 49. The defendant, therefore, was quite within his legal rights in proceeding with the distress in the principal case. Where this is so, equity will interpose only where it appears necessary to restrain an unconscionable abuse of the right. See *In re Roundwood Colliery Co., supra*, 380. No sufficient evidence of inequitable conduct on the part of the defendant appearing, for he clearly was not acting inequitably in endeavoring to collect his due advance rent, the court seems properly to have denied the plaintiff's motion.

LIBEL AND SLANDER — DAMAGES — AGGRAVATION OF DAMAGES BY PLEA OF JUSTIFICATION. — In an action of libel the defendant pleaded truth in justification. *Held*, that the plea may be considered in aggravation of damages. *O'Malley* v. *Illinois Publishing and Printing Co.*, 51 Nat. Corp. Rep. 475 (App. Ct. of Ill., 1st Dist.).

It is well settled that "actual malice" in the publication of a defamation opens the defendant to exemplary damages. *Paxton* v. *Woodward*, 31 Mont. 195, 78 Pac. 215; *Lee* v. *Crump*, 146 Ala. 655, 40 So. 609. See ODGERS, SLANDER AND LIBEL, 5 ed., 389. By malice is meant not necessarily the defendant's knowledge of the falsity of the statement, but also his recklessness as to its truth, or his intent to injure the plaintiff. *Palmer* v. *Mahin*, 120 Fed. 737. See ODGERS, SLANDER AND LIBEL, 5 ed., 390. The weight of authority, including the principal case, holds that a plea of justification, if not proved, is evidence of malice in the original publication and hence aggravates damages. *Gorman* v. *Sutton*, 32 Pa. St. 247; *Krulic* v. *Petcoff*, 122 Minn. 517, 142 N. W. 897. See *Coffin* v. *Brown*, 94 Md. 190, 199, 50 Atl. 567, 570. Many courts, however, hold that the plea must be found to have been introduced in bad faith to be given this effect. *Fodor* v. *Fuchs*, 79 N. J. L. 529, 76 Atl. 1081; *Henderson* v. *Fox*, 83 Ga. 233, 9 S. E. 839. It is submitted that only if so introduced is the plea logically probative of either a carelessness of truth or an intent to injure. Of course no action itself could be brought on the plea, because it is absolutely